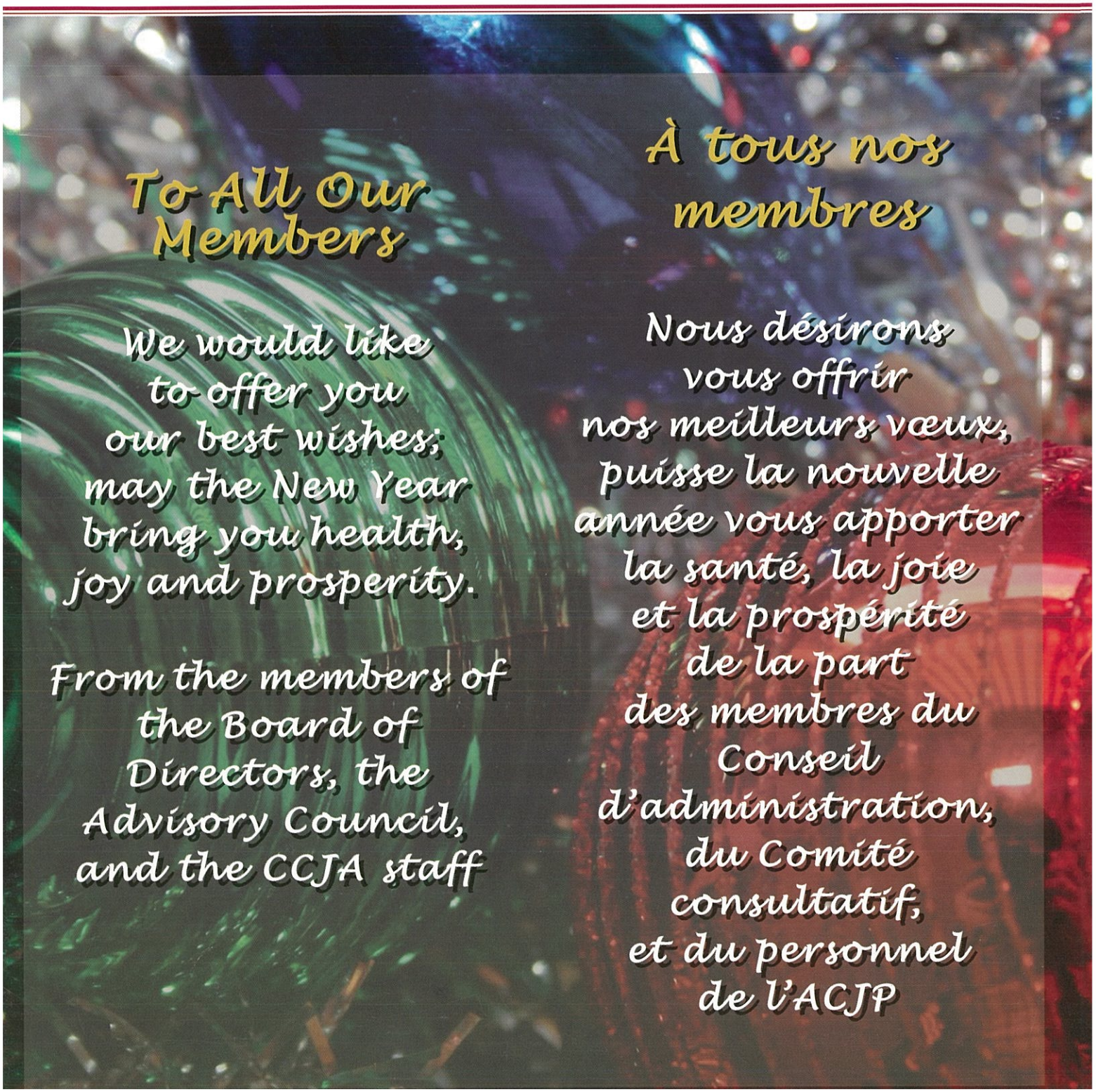
JUSTICE Actualités Report

ssociation canadienne de justice pénale

Canadian Criminal Justice Association

olume 22 No. 1

Winter / Hiver 2007


To All Our Members
We would like to offer you our best wishes; may the New Year bring you health, joy and prosperity.
From the members of the Board of Directors, the Advisory Council, and the CCJA staff
À tous nos membres
Nous désirons vous offrir nos meilleurs vœux, puisse la nouvelle année vous apporter la santé, la joie et la prospérité de la part des membres du Conseil d'administration, du Comité consultatif, et du personnel de l'ACJP

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Volume 22 No. 1 **Winter / Hiver 2007**

JUSTICE REPORT carries information of value to Association readers and the public interested in matters related to the administration of justice in Canada. Opinions expressed in this publication do not necessarily reflect the Association's views, but are included to encourage thought and action on the criminal justice system throughout Canada. For more information on the activities of the CCJA, please contact:

ACTUALITÉS-JUSTICE renferme des renseignements utiles aux lecteurs de l'Association et au public qu'intéressent les questions relatives à l'administration de la justice au Canada. Les opinions qui sont exprimées ne reflètent pas nécessairement les vues de l'Association, mais y figurent afin d'encourager à réfléchir et à agir sur la justice pénale dans tout le Canada. Pour obtenir de plus amples renseignements sur les activités de l'Association, veuillez communiquer avec:

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Notice of Annual General Meeting

To: All Members of the Canadian Criminal Justice Association

When: Friday, February 23, 2007
11: 30 – 12: 30 (Ottawa time)

Where: Sheraton Ottawa Hotel
Room E – 2nd Floor
150 Albert Street
Ottawa, Ontario – Tel: (613) 238-1500

The Agenda will include the following:

1. Adoption of the Agenda
2. Adoption of the Minutes of the last Annual General Meeting (October 25, 2005 and October 27, 2006) *
3. President's Report *
4. Executive Director's Report *
5. Audited Financial Statements to March 31, 2006 *
6. Appointment of Auditors for 2006-2007
7. Reports of the Chair of the Nominating Committee
   a) Advisory Council *
   b) Board of Directors *

* **All supporting documents related to the above Agenda are available on our Website at www.ccja-acjp.ca or by contacting our office by phone at 613-725-3715, by fax at 613-725-3720 or by e-mail at ccja@bellnet.ca**

Note: There will be a brief meeting of the new Board of Directors immediately following the Annual General Meeting.

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Avis de convocation Assemblée générale annuelle

À : Tous les membres de l'Association canadienne de justice pénale

Quand : Le vendredi 23 février 2007
11 h 30 – 12 h 30 (heure d'Ottawa)

Où : Hôtel Sheraton Ottawa
Salon E – 2e étage
50, rue Albert
Ottawa, ON – Tél: (613) 238-1500

L'ordre du jour sera le suivant:

1. Adoption de l'ordre du jour
2. Adoption des procès verbaux de l' Assemblée générale annuelle (du 25 octobre 2005 et du 27 octobre 2006) *
3. Rapport du Président *
4. Rapport du Directeur général *
5. Rapports financiers vérifiés au 31 mars 2006*
6. Choix des vérificateurs pour 2006-2007
7. Rapports du Président du Comité des candidatures
   a) Comité consultatif *
   b) Conseil d'administration *

* **Toutes les annexes se rapportant à l'ordre du jour ci-haut peuvent être consultées sur notre Site web à www.ccja-acjp.ca ou en communicant avec nos bureaux par téléphone au 613-725-3715, par télécopieur au 613-725-3720 ou par courriel à ccja@bellnet.ca**

Note : Il y aura une brève réunion du nouveau Conseil d'administration immédiatement après l'Assemblée générale annuelle.

Editorial / Éditorial

By par Irving Kulik

Executive Director / Directeur général

Over the course of the last year we have seen an unprecedented volume of criminal justice draft legislation being considered by the House of Commons and its committees. This is a natural outcome of the new government's commitments as outlined during last January's election campaign and the listing of criminal justice as one of its priorities.

We at the Canadian Criminal Justice Association, and in particular the Policy Review Committee, have been busy in drafting our own input to the Justice and Human Rights Standing Committee of Parliament. To date, we have submitted briefs on Bill C-9 regarding Conditional Sentences and C-10 on Mandatory Minimum Sentences. On the latter we were also invited to testify in person on December 6.

Currently our Policy Review Committee is working on positions regarding Statutory Release, blood alcohol levels, age of consent, street racing and the 3 strikes dangerous offender legislation. None of these are simple to formulate in our attempt to arrive at a consensus. I imagine it will be much more challenging at the level of the Parliamentary Committee. Certainly each one of us has our own philosophy and values that drive our views.

The current Government is considered, arguably, to be one of the most ideological in recent memory, thus impacting their position on matters of criminal justice. On the other hand, having had the opportunity to listen to the questions posed by members of the Parliamentary Committee, it struck me that there was much more at play than a simple 'tough stance' on crime. M.P.s all genuinely seek to do what they believe is right.

When political jostling is put aside, parliamentarians of all parties are faced with responding to the demands of a frightened and angry population when a tragedy takes place. The media blares out provocative 3 inch headlines. The public demands tougher action and for M.P.s more restrictive laws are the simplest response. Unfortunately, at best, these will have little impact on crime trends. At worst they will lead

Au cours de l'année, un nombre impressionnant de projets de lois en matière de justice pénale ont été présentés afin qu'ils soient étudiés par la Chambre des Communes et ses comités. Il fallait s'y attendre... en raison des engagements pris par le nouveau gouvernement lors de la campagne électorale en janvier dernier et de la place prépondérante qu'il a choisi d'accorder à la justice pénale parmi les priorités de son premier mandat.

En raison de ce contexte, l'Association canadienne de justice pénale a été fort occupée, et, tout particulièrement, notre Comité d'examen des politiques qui fut pressé de rédiger plusieurs ébauches de mémoire en vue de les soumettre au Comité parlementaire sur la justice et les droits de la personne. Jusqu'à présent, nous avons soumis un mémoire sur le Projet de loi C-9 concernant l'emprisonnement avec sursis et sur le Projet de loi C-10 concernant les peines minimales pour les infractions mettant en jeu des armes à feu. A propos de ce projet spécifique, nous avons également été invités à témoigner en personne le 6 décembre.

Actuellement, le Comité d'examen des politiques travaille sur les positions quant à la libération d'office, le taux d'alcoolémie dans le sang, l'âge légal du consentement, les courses de rue et la règle des condamnations successives (« 3 strikes ») pour les délinquants dangereux. Il n'y a pas de formule toute faite et les questions abordées sont complexes avant d'arriver à un consensus. J'imagine vraisemblablement que cela pose un défi majeur au Comité parlementaire. Il est évident que chacun d'entre nous à sa propre vision et ses valeurs personnelles qui guident ses choix.

Le gouvernement actuel est, indubitablement, considéré comme étant l'un des plus idéologique, à ma mémoire, et celui qui vise à prendre de front les changements en matière de justice pénale. D'autre part, j'ai eu l'occasion d'écouter les questions posées par les membres du Comité parlementaire. J'ai été singulièrement frappé par l'absence d'une intention simpliste de régler la question de la criminalité en envisageant un « pur durcissement » des lois. Tous les députés semblaient sincèrement rechercher à faire ce qu'ils croyaient juste.

to negative results. In either case, they will increase costs and probably draw resources away from other needy areas, which if remedied, could have a salutary effect in crime prevention. It is unfortunate that it is much more expedient to simply harden the law than to focus on the more difficult and long term factors in social development that will lead to crime prevention.

This being said, we need to remind ourselves that crime and criminal statistics should not be viewed simply on a year over year basis. The longer term trends are clear. Crime, especially violent crime, has been diminishing over the last 10 years. Whether this is due to demographics or because the right kinds of programs have been implemented in some places, this is fact. Too few people are aware or acknowledge this reality however. As was recommended almost a decade ago by a Justice Committee, we need to reiterate the call upon government representatives and senior public servants to invest serious efforts in public education in the area of criminal justice. A knowledgeable public is a wiser public that will allow parliamentarians the space to draft policy that meets the needs of all Canadians and brings results, rather than a momentary feeling of respite. Hopefully, the work of the Canadian Criminal Justice Association, including its publications and the 31st Congress taking Place in November 2007 in Toronto, will continue to make a valuable contribution to public education. We invite all of our criminal justice partners to join us in these endeavours.

On behalf of the Board of Directors, the Advisory Council and staff we wish you a very healthy, happy and prosperous New Year. May we continue to seek and attain our goals of a humane, equitable and effective criminal justice system in Canada.

Quant les polémiques partisanes sont mises de côté, les parlementaires de toutes les formations cherchent à répondre aux demandes de la population qui s'effraie voire se fâche quant une situation tragique survient dans la collectivité. De plus, les médias alimentent le drame en affichant des titres provocateurs. Par voie de conséquence, le public exige une action plus musclée de la part du gouvernement et les députés se voient contraints d'emboîter le pas par des lois de plus en plus restrictives comme s'il s'agissait de la « solution ». Malheureusement, au mieux, celles-ci auront peu d'impact sur les tendances de la criminalité et, au pire, elles mèneront à l'échec.

Dans les deux cas, elles augmenteront des dépenses et déplaceront probablement des ressources utiles à des secteurs qui en ont tant besoin. Parfois, certaines mesures sociales, si elles étaient remédiées, pourraient avoir un effet salutaire dans la lutte contre la criminalité. Il est malheureux de constater qu'il apparaît plus opportun de durcir les lois qui combattent le crime que de se concentrer sur les facteurs plus complexes et qui méritent une implication à long terme à la promotion du développement social, véritable instrument de prévention à la lutte contre le crime.

Ceci étant dit, nous devons nous rappeler que le crime et les statistiques criminelles ne doivent pas être vus simplement sur une vision à court terme (une année en particulier). Les vrais courants à plus long terme nous éclairent davantage. À preuve, les crimes, particulièrement ceux de nature violente, ont diminué au cours des dix dernières années.

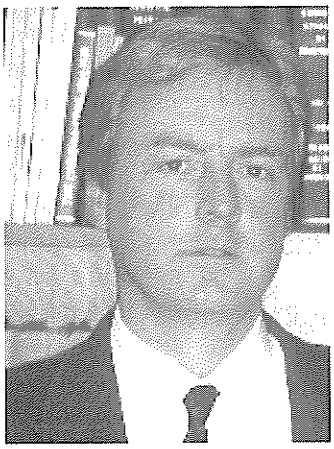
Est-ce le simple résultat de données démographiques ou l'à-propos des programmes qui ont été mis en oeuvre ? En fait, trop peu de personnes sont conscientes ou reconnaissent ces réalités. Comme l'a fait un comité sur la justice il y a plus d'une décennie, nous devons réitérer l'appel auprès des élus et des hauts fonctionnaires afin qu'ils prennent des mesures sérieuses dans l'éducation dans le secteur de justice criminelle. Un public bien informé est un public plus sage et qui donne l'espace voulu aux parlementaires afin que ceux-ci élaborent des politiques qui répondent adéquatement aux besoins de toutes les Canadiennes et les Canadiens et contribuent à donner des résultats, plutôt qu'un sentiment de sécurité éphémère.

Nous croyons que le travail de l'Association canadienne de justice pénale, via ses publications et éventuellement au cours de son 31e Congrès qui aura lieu en novembre 2007 à Toronto, continuera à faire une contribution de valeur à l'éducation du public.

Nous invitons tous nos partenaires du système de justice pénale à se joindre à nous dans ces efforts.

Au nom du Conseil d'administration, du Comité consultatif et du personnel, je vous souhaite un Nouvel An rempli de santé, de joie et de prospérité. Puissions-nous continuer à chercher et à atteindre notre but d'un système de justice pénal, humain, équitable et efficace au Canada.

Criminal Justice Reform in Canada: The way forward



By Julian V. Roberts,

Department of Criminology, University of Ottawa

These are turbulent times for the criminal justice system in Canada. Shortly after its election the current government made good on its promise to introduce a number of legislative reform proposals. Bills have emerged to limit the scope of conditional sentencing and expand the use of mandatory sentences and create a reverse onus for certain accused at the time of bail. In this brief article my interest is not upon these specific legislative initiatives, but rather the process by which legislative reforms are developed.

Once the government produces a Bill, it is reviewed by a parliamentary committee. This kind of review tends to be more rigorous under a minority government but, even under this condition it can be, and often is a hit and miss affair. The selection of witnesses can reflect the agendas of committee members rather than the expertise of the witness. And witnesses often leave their specific expertise at the Parliamentary X-ray machine, and offer evidence that goes well beyond their professional experience. When a witness testifies in court – expert or otherwise – departs from the script the court or counsel will soon return them to the subject on which they should be offering evidence. The court will be attentive to ensure that the evidence is relevant and reflects more than speculation on the part of the witness.

The selection of witnesses can reflect the agendas of committee members rather than the expertise of the witness.

Finally, Parliamentary review of legislation is very brief. With so many priorities to examine the House of Commons Standing committee was only able to devote a few weeks worth or hearings to an

important issue such as the future of conditional sentencing. Very little research was placed before the committee, and the government had commissioned almost no studies to justify its legislative proposals to restrict the use of a conditional sentence.

The failings of the Parliamentary review system are apparent from a glance at the transcripts from the hearings regarding C-9, the Bill which aimed to restrict the application of the conditional sentence of imprisonment. A number of criminal justice professionals who testified were present to report on the administration of the sanction, but expressed strong opinions about use of conditional sentences by the judiciary – an issue on which their professional expertise has no bearing.

Moreover, committee members are often more interested in making their own political points. On a number of occasions in the past that I have appeared before such a committee I have had "questions" put to me that were in fact political statements – and often lengthy ones. The member had simply wanted to put his or her opinions on the record.

To use an old American expression, this is simply no way to run a railroad. Part of the problem is that criminal justice policy development has become heavily politicized. A minority government wishes to shore up sufficient support to obtain a majority, while the opposition parties sense a change in electoral fortunes is quite likely with a minority in power. The result is that all parties are likely to see criminal justice as an issue on which to make electoral gains. One consequence of this is that all parties adopt tougher criminal justice policies. Thus in the last election even the NDP came out in favour of mandatory sentences for certain offences – a position the party would not have embraced five years ago.

A way forward: Creation of a Royal Commission on Criminal Justice

There is a better way to develop criminal justice policies. In order to de-politicise the criminal justice debate and to develop more rational criminal justice policies at this critical moment in Canada's history, we need a Royal Commission into crime and justice. Commissions are usually created in response to a particular problem. But they can serve an equally important purpose by offering Parliament – indeed the country itself an unbiased, non-partisan, evidence-based examination of the most pressing issues in the field of criminal justice. Take the question of gun crime – one of the most contentious criminal justice in Canada today. A Royal Commission could produce some definitive answers about trends in gun crime, as well as draw some conclusions about the most effective policy responses.

In light of the principle of judicial independence judges seldom if ever participate in discussions about criminal justice reforms.

Composition of Commission

The Commission would be composed of criminal justice professionals and experts of all stripes, and would include representatives of critical constituencies such as crime victims. It could be chaired by a member of the judiciary. Commissioners would be selected on the basis of their expertise or because they represented an important stakeholder group in the field of criminal justice.

Mandate of Commission

What functions would such a commission perform? It could address key general questions such as whether the crime rate is increasing as well as more specific issues such as the use of firearms. Parliament could set the agenda for the Commission by identifying the areas of crime and criminal justice of most concern to Canadians. This is a more appropriate role for elected representatives.

Once charged to examine a range of issues the Commission could perform a "best practices" analysis – looking at the experience to see what works in other jurisdictions. It could commission or conduct original research upon topics for which the government is contemplating reform legislation. Once again the recent experience with the conditional sentencing Bill is instructive. The research record reviewed by the committee examining that Bill was very poor, simply because neither Statistics Canada nor the Department of Justice Canada has to date produced enough research on the issue. We know very little, for example, about the administration of the sanction, or its success rate in comparison to institutional imprisonment. Before drastically restricting the ambit of a new sanction we should know a lot more about the way that it is in fact working.

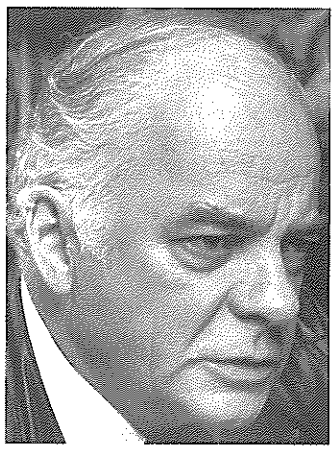
A Royal Commission's research agenda would be focused on the most important problems confronting the criminal justice system in Canada and would produce findings that would ultimately give rise to specific reform proposals. Sufficient time would be set aside for consultation with the public and all interested parties.

The Commission would also consult important groups that are currently overlooked in the debate about the future of criminal justice. One obvious example is the judiciary. In light of the principle of judicial independence judges seldom if ever participate in discussions about criminal justice reforms. However, their independence would not be compromised if they were asked to participate in a survey about current practice and problems. Offenders, ex-offenders and the families of offenders are also generally overlooked, but they have an important contribution to make in terms of informing us about issues such as desistance.

At the end of the day, the Commission would produce a final report containing a series of recommendations for the government to consider. In addition to the short-term payoff in terms of more informed policy-making, the report of the Commission would serve as a point of reference for years to come.

It is a good idea to have such a Commission periodically – rather than creating one only in reaction to a particular problem. During an era of government by a minority the need for such a body is even greater. A Royal Commission into the future of criminal justice would ensure that criminal justice legislation over the next few years reflected an informed and consensual examination of the issues. The current federal government has revealed its stripes by abolishing the Law Commission of Canada. In light of this decision it seems unlikely that it will see merit in creating a Commission along the lines that I have proposed here. It is a pity; any government interested in rational criminal law reform should be interested in such a proposal.

La méfiance comme philosophie



Par Laurent Laplante,

Commentateur pigiste

Qu'un gouvernement minoritaire dépose les projets de lois à un rythme fiévreux ne saurait surprendre. C'est même un indice de sincérité si un gouvernement à longévité douteuse s'expose au déboulonnage par fidélité à ses engagements électoraux. Agirait-il autrement qu'on lui reprocherait de ne pas placer ses valeurs suffisamment haut et de ne pas en assurer le respect avec assez d'empressement. Le problème que posent les orientations législatives du gouvernement Harper, ce n'est donc ni l'abondance ni la minutie des propositions. C'est plutôt la philosophie qui les imprègne d'un projet de loi à l'autre. Cette philosophie en est une de méfiance, de soupçon et de sévérité, avec tous les risques que cela présente dans le domaine de la justice.

Les juges sur la sellette

Même si les projets de loi rédigés n'ont pas tous obtenu l'aval de la Chambre des communes, la première session de la 39ème législature fournissait de claires indications sur la pensée du gouvernement Harper. Les changements au cadre de la justice pénale canadienne qu'on y greffe maintenant confirment l'impression initiale. Ainsi, pour peu que les projets de lois soient adoptés, la magistrature voit ou verra sa marge de manoeuvre se réduire sensiblement. Autant l'élaboration d'une Charte canadienne des droits a ancré dans certains esprits la conviction que le gouvernement du pays relevait désormais de la Cour suprême et du pouvoir judiciaire en général,

Dans un grand nombre de cas, le tribunal devra imposer une peine minimum; fini le temps où le Code criminel définissait surtout la limite supérieure de la peine.

autant les amendements apportés ou promis au Code criminel accréditent le sentiment que les juges ne sont fiables aux yeux du gouvernement Harper que si la loi les oblige à imposer telle ou telle sentence.

La multiplication des « automatismes » est, en effet, révélatrice de cette attitude. Dans un grand nombre de cas, le tribunal devra imposer une peine minimum; fini le temps où le Code criminel définissait surtout la limite supérieure de la peine. Dans un régime faisant confiance à la compétence et au bon sens des juges, on s'en remettrait pourtant à eux du soin de moduler les sentences selon les caractéristiques de l'accusé, les circonstances du crime et les besoins sociaux. Si, à l'inverse, on considère les juges comme des gens incapables de maturité ou inaptes à lire le climat social, on leur imposera des règles si minutieuses qu'ils deviendront de simples exécutants. C'est le cas quand C-9 fait savoir aux tribunaux que, dans telle et telle circonstances, le coupable ne pourra faire l'objet d'un emprisonnement avec sursis. Ce sera encore le cas si C-10 est adopté : on y lit que le juge devra imposer une peine minimum de cinq, de sept ou de dix ans selon que... Ce n'est vraiment pas la peine de verser une rémunération annuelle de 250 600 dollars si c'est pour traiter le récipiendaire en distributrice automatique et télécommandée ! Qu'il s'agisse du registre des délinquants sexuels ou de l'interminable liste des infractions envisagées par le projet C-27, la tendance est la même : on ne permettra pas aux juges de s'éloigner des sanctions définies d'avance et dans l'abstrait. Au nom d'une philosophie qui perçoit le monde selon une vision manichéenne et qui affirme que les méchants sont méchants de naissance et à jamais, on réduit les possibilités d'une individualisation des peines. Du même coup, on limite le rôle de la magistrature à un rituel de portée limitée : le décor demeure et fait illusion devant le bon peuple, mais les décisions déterminantes sont arrêtées par l'exécutif. Cette méfiance à l'égard des juges est telle que, advenant l'approbation de C-27, le fardeau de la preuve sera inversé : si le juge n'impose pas de conditions particulières à un coupable purgeant sa peine dans la communauté, il devra justifier ce silence.

Des règles douteuses

Cette confiance, qu'on semble refuser à la magistrature, on l'accorde en surabondance aux corps policiers et à leurs collaborateurs. On envisage, par exemple, de les laisser déterminer si les facultés d'un conducteur sont affectées par la consommation d'une drogue quelconque. Quand on sait combien de tests et de recherches ont été nécessaires pour rendre fiable, crédible et gérable le recours à l'ivressomètre, on se demande comment la consommation d'une drogue pourrait être détectée sans menace au droit de chacun à son intégrité physique. C-32 a beau parler d'une formation particulière des « agents évaluateurs » et du recours à des professionnels de la santé pour le prélèvement de substances corporelles, il n'en constitue pas moins une inquiétante avancée de contrôles délicats.

Ce n'est vraiment pas la peine de verser une rémunération annuelle de 250 600 dollars si c'est pour traiter le récipiendaire en distributrice automatique et télécommandée

Quand il est question des empreintes génétiques, le projet C-18 provoque un pire malaise en évoquant une étrange possibilité (i) : celle qu'elles soient communiquées à l'étranger. Le législateur, qui entend guider fermement la main du juge, ne semble pas voir la nécessité de baliser la conduite policière. L'affaire Maher Arar, que la démission du commissaire de la GRC abandonne dans le brouillard (et sans les excuses du gouvernement), devrait pourtant conseiller la plus grande prudence sur ce terrain. Il n'est même pas certain, en tout cas, que le Canada, qui s'est engagé à ne refouler personne vers des pays qui pratiquent la peine de mort,

respecte toujours sa propre législation. Le doute est d'autant plus légitime que le Canada n'a jamais répondu clairement aux questions posées au sujet des prisonniers que ses soldats peuvent faire en Afghanistan. Si ces captifs sont remis entre les mains de l'armée étatsunienne, peuvent-ils aboutir à Guantanamo ou disparaître dans l'un des « trous noirs carcéraux » dont on apprend peu à peu l'existence ? Que l'hypothèse d'une dissémination de l'information surgisse dans un projet de loi canadien n'a rien de rassurant. Alors que le pouvoir judiciaire, par tradition, doit s'enorgueillir de travailler au grand jour, le pouvoir exécutif et son bras policier s'accommodent ici d'une certaine pénombre.

... il est manifeste que l'actuel gouvernement est tenté de modifier le cadre de la justice pénale canadienne selon l'interprétation la plus émotive des événements de septembre 2001.

Un certain illogisme ?

Les références aux armes abondent dans les intentions législatives du gouvernement Harper. Répétons que de nombreuses dispositions n'ont pas encore force de loi; elles témoignent cependant d'une philosophie. Plusieurs ajoutent des circonstances aggravantes et déclenchent les automatismes qu'affectionne présentement le législateur. Certaines créeraient de nouvelles infractions (C-10). En seraient coupables, par exemple, les personnes qui commettraient une effraction ou un vol qualifié pour se procurer des armes. Le projet distingue d'ailleurs savamment entre celles qui sont prohibées et celles qui font l'objet d'une autorisation restreinte. Fort bien. On se demande cependant comment réconcilier ce souci constant avec l'intention exprimée par ce gouvernement de faire disparaître le (coûteux) registre des armes à feu ? S'il est nécessaire d'identifier les armes utilisées dans la perpétration d'une gamme de crimes, le registre ne fait-il pas partie des ressources dont les corps policiers devraient être pourvus ?

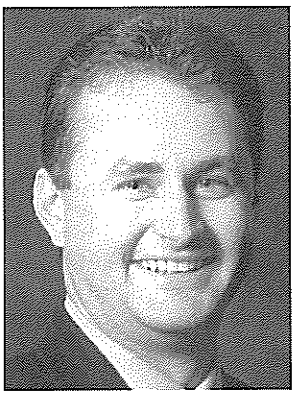
La fièvre tombe-t-elle ?

Indépendamment de toute partisannerie, il est manifeste que l'actuel gouvernement est tenté de modifier le cadre de la justice pénale canadienne selon l'interprétation la plus émotive des événements de septembre 2001. L'équipe libérale de Paul Martin avait également emprunté cette voie de façon à peine moins fiévreuse. C'est dire qu'en l'espace d'un quinquennat, plusieurs des principes fondamentaux de la justice pénale canadienne ont été ébranlés, depuis la présomption d'innocence jusqu'à l'intrusion dans l'intimité des gens en passant par le recours à des procédures judiciaires délibérément opaques. Subir la détention sans même savoir la nature de l'accusation, voilà qui devrait répugner à tout démocrate !

Depuis quelque temps, cependant, cette fièvre semble avoir perdu du terrain chez nos voisins du Sud. Ils savent mieux aujourd'hui à quel point ont régné l'affolement, le mensonge, la manipulation de l'opinion. Un mouvement se dessine même en faveur du rétablissement des précautions classiques. En voici un signe : les sénateurs étatsuniens Arlen Specter et Patrick Leahy ont proposé leur Habeas Corpus Restoration Act of 2006. Il serait pour le moins paradoxal que le Canada, qui n'a guère été touché par le terrorisme et qui n'a ébranlé ses institutions que pour complaire aux inquiétudes d'outre-frontières, tarde plus que les États-Unis à recouvrer son sang-froid.

Malheureusement, rien, dans les orientations exprimées hier et aujourd'hui par le gouvernement Harper, ne laisse l'impression que le Canada soit sur ce sentier.

The Truth about Bill C-27 and Why the Critics Have Struck Out



By Steve Sullivan,

President of the Canadian Resource Centre for Victims of Crime, and

Ottawa based non-government advocacy group for crime victims.

Much has been said about the Bill C-27, the Government's bill to better deal with Dangerous Offenders. Unfortunately, much of what has been said by critics of the bill has been misleading. For example, it has been compared to the three strikes law made famous in the US but a careful review of the bill illustrates it has little resemblance to those measures. It has been suggested that Bill C-27 will result in hundreds more offenders being declared dangerous every year but this too is simply not true.

In fact, Bill C-27 is a measured, focused approach to try and capture those offenders who have shown by their past behaviour that they either do not want to be rehabilitated or cannot be rehabilitated. It is about public safety and ensuring we do not allow these individuals prey on more innocent victims. It may not be perfect, but it is headed in the right direction.

Last year, twelve people were designated dangerous offenders. Forty-five percent of dangerous offenders...

The current Dangerous Offender provisions are rarely used. Between 1978 and 2005, there have been less than 400 offenders declared Dangerous Offenders. Last year, twelve people were designated dangerous offenders. Forty-five percent of dangerous offenders had fifteen or more previous convictions on their adult record and most of the dangerous offenders had three or more victims (predominately females and children). Keep in mind these are convictions only – given that many Dangerous Offenders are also sex offenders, we can safely assume that their official criminal records only represent a portion of the damage they have done and the harm they have inflicted.

Under the scheme proposed in If Bill C-27, offenders convicted of three of the most serious, violent offences, for which they received federal sentences, would presumptively be declared Dangerous Offenders and jailed indefinitely. To the layman, that may sound harsh, but anyone familiar with the Canadian criminal justice system will know that judges in Canada do not hand out federal sentences lightly. Most sex offenders receive provincial sentences and usually only repeat sex offenders enter the federal system.

Take for example the case of William Leadley, a high risk sex offender recently released to the Niagara region. Niagara Regional Police were so concerned that he would victimize another child that they issued a public warning. In 1996, Leadley had multiple convictions for molesting three young boys and was sentenced to three years probation. In 2000 he had two more convictions for molesting two teenage boys and was sentenced to twelve months incarceration and in 2005, he was convicted of luring a young girl via the Internet for the purposes of having sex and was sentenced to eleven months incarceration.

That is six victims (that we know of) and the harshest penalty William Leadley received was twelve months. Therefore, in order for Bill C-27 to apply to this offender, he would have to be convicted of three more separate sexual and/or violent offences and be given a federal sentence for each one. So before William Leadley would be caught by Bill C-27, there would have to be at least three more victims. Fortunately, nothing under Bill C-27 prevents the Crown from seeking a Dangerous Offender designation at any time.

An anomaly you say? Take Shaun Deacon, who is currently on a Long Term Supervision Order and is such a high risk that Corrections Canada escorts are with him whenever he leaves his halfway house. Despite his criminal record of grooming and molesting over half a dozen children, he would not be caught by Bill C-27.

Still not satisfied? Peter Whitmore, who is responsible for renewing the debate about Dangerous Offenders, would not be caught by Bill C-27 even if he is convicted of the most recent charges against him involving two young boys. Even if he is convicted of these latest offences and sentenced to federal time, he will not have received the number of federal sentences required by this legislation.

It is clear that Bill C-27 is targeted at the worst of the worst, so much so that it does not even catch the three offenders mentioned above.

The debates about the bill in both the media and in Parliament have reinforced many of the perceptions about the bill. Unfortunately, no one seems interested in discussing what the real impact of Bill C-27 will be. Many of the provisions of the bill are overlooked in place of headlines and one-liners the media love so much.

For example, the Crown will still be required to submit an application to have the offender declared a Dangerous Offender. This means the Crown, after considering all the facts, could decide not to pursue a Dangerous Offender even if the offender is convicted of the third applicable offence. Even though those declared Dangerous Offenders are sent to prison indefinitely, they can apply for day parole after four years, full parole after seven years and every two years after that.

A lot of the criticism of the bill has focused on the reverse onus provisions of Bill C-27, but it is important to note that there is no reverse onus on guilt. In fact, the Crown has had to prove guilt three separate times (and likely more, if one were to count provincial sentences). Under Bill C-27, it is presumed that those convicted of three of the scheduled offences are Dangerous Offenders. The offender would have to prove he was NOT dangerous. There would be a hearing where both sides would call evidence, but at the end of the day, whether the onus is on the Crown or on the offender, the sentencing judge must be satisfied that the offender is so dangerous that he has to be jailed indefinitely. That is not an easy standard to meet. The provisions of the Criminal Code are very stringent and judges do not take them lightly.

Because the bill targets repeat sex offenders some critics have trotted out the studies that show recidivism levels are low for sex offenders. These studies are flawed in many ways. For example, most studies only consider official reporting and convictions rates, which do not give an accurate picture of how many children are being sexually abused or how many offenders are re-offending. It is one of the most underreported crimes in the world and we know that many sexual predators have many more victims than their records show.

Many of these studies only track offenders for a short time, like three years. Longer term studies show the longer you track sex offenders the higher the recidivism rates. And while some sex offenders have low rates of recidivism (incest offenders), others have high rates (homosexual predators). Bill C-27 clearly targets only the most serious, repeat offenders so the studies that have been thrown out have little relevance to the kinds of offenders the bill targets.

Although they have not received the same level of scrutiny, another important aspect of Bill C-27 is the amendments to s.810.1 orders, which would allow a court to impose an order for up to two years. These orders have proven to be one of the few tools law enforcement have to deal with high risk offenders who have served their entire sentences and are being released from prison despite their risk. At least once a week, somewhere in Canada, a police service is issuing a warning to their citizens about the release of a high risk offender.

Bill C-27 is a step in the right direction and we urge support for the bill and we hope that it prompts further debate regarding how Canada deals with the relatively small population of dangerous offenders. For example, there is nothing in Bill C-27 or the current laws that effectively deal with high risk offenders who have served their entire sentences but remain a high risk to re-offend. Canada should be looking at post-sentence detention models used by other countries. The former Progressive Conservative Government introduced these measures in 1993 before their historic defeat and, during that election, the Liberal government promised to move in that direction.

Recently, the Ontario Minister of Justice has called on the government to amend the law so that if a Long Term Offender violates his conditions, officials can then seek a Dangerous Offender designation without waiting for the offender to commit a serious personal injury offence. The Long Term Offender provisions are almost a decade old now and there is some evidence that they are not working the way that was intended so it may be time to for a review of these provisions as well.

Dangerous Offender laws are not about punishment, they are about public safety and about prevention. Bill C-27 seeks to build on those principles by amending the existing law to catch more of the most dangerous offenders, thereby denying them the chance to create more victims.

Bill C-27 clearly targets only the most serious, repeat offenders so the studies that have been thrown out have little relevance to the kinds of offenders the bill targets.

Serving the Public Interest

By Simon Coakeley,

Atlantic Regional Deputy Commissioner, Correctional Service of Canada

One of the hallmarks of public service is the requirement to factor many different priorities and policies into decision-making, and to be constantly aware that there are often competing, and even conflicting priorities that must be addressed. Regardless of whether public servants work in a federal, provincial, or municipal context, and regardless of our hierarchical level, there are times when each of us has to reconcile these various imperatives, and often, this is not an easy undertaking.

It is human nature – perhaps because it is expedient and seemingly efficient – to invoke a hierarchy of imperatives to help us make decisions, but if the hierarchy is inappropriate, or incomplete, then we may resolve an immediate problem to our peril in the future. If we do not look to broader factors, the risk is that a short-term, easier solution will not be sustainable in the long term, and could actually create more challenges for ourselves down the road, including for the people who will be in our jobs in the future.

I have had the benefit of being exposed to a number of the broader factors, not only those based in legislation, that drive recommendations and decision-making by senior officials.

My own experiences in the federal system have been varied, and I have had the benefit of being exposed to a number of the broader factors, not only those based in legislation, that drive recommendations and decision-making by senior officials. However, my exposure to the criminal justice system in Canada lies somewhat closer to that of an average Canadian than that of a career criminal justice professional whose experiences are solely in the areas of police, corrections or similar occupations.

As a result of my broader, more generalist experience, I have come to realize that we are both enabled and constrained by legislation. For example, the Correctional and Conditional Release Act (CCRA) establishes the Correctional Service of Canada (CSC), creates the position of Commissioner, and empowers the Commissioner to manage the Service, in part by developing and implementing Commissioner's Directives that set out important principles and direction regarding treatment of offenders, and the administration of their sentences. But this is far from the whole story.

The CCRA is but one component of our legislative framework and it is important for all of us working at CSC to recognize and factor in the many other pieces of legislation that guide our behaviours and decisions. For example, the allocation of financial resources, and the way in which they are to be spent is governed by the Financial Administration Act (FAA). Hiring of staff is governed by the Public Service Employment Act (PSEA). The CCRA does not, and cannot, stand alone. Without these other pieces of legislation, the Commissioner of CSC would not have a budget, or the authority to spend it, and would have no authority to hire people to carry out the work of CSC.

So we have the CCRA, and the companion legislation that provides for the necessary dollars and people to get correctional results. But again, this is not the whole story. Just as some pieces of legislation confer authority on heads of departments and agencies, others require that this authority be exercised within certain parameters. For example, the Official Languages Act, the Canadian Human Rights Act, the Employment Equity Act, the Access to Information and Privacy Acts, etc., not to mention the myriad pieces of subordinate legislation like government contracting regulations, policies, and collective agreements, all have to be factored in by decision-makers. It can be challenging to find the balance within these many and diverse legislative texts. Taking a narrow or too much of an expedient approach can lead us down the wrong path, and as I mentioned earlier, present risks and problems for the longer term.

You can see that CSC has far more than the CCRA to guide it in carrying out its public safety contributions: language rights of CSC employees and offenders, CSC budget processes, contracting regulations, and staffing are all covered in other pieces of legislation. And, you can also see why the balancing act is not as simple as deciding that one piece of legislation can or should trump another because, with some exceptions (e.g. The Charter of Rights and Freedoms), laws do not trump each other. They co-exist and must be reconciled to each other.

We are not authorized to pick and choose the Acts we like best or feel most comfortable with; that is not our role or our mandate

This is also why it is too simplistic, and inadequate to just seek an opinion that provides a false pillar of certainty and clarity, that in turn leads us to falsely assure ourselves that "when in doubt, the answer is X." It is more complex than that, and while there may be a tendency to find clarity in what we see as our primary governing legislation, allowing "our" law to eclipse other pieces of legislation can, and will, create a host of problems in two broad areas.

First, on a practical level, we set ourselves up to be challenged, and there is little doubt we will lose, regardless of our good intentions and motives – thus proving that taking the more balanced, broader approach in the first place is actually the path to efficiency, effectiveness, and long-term sustainability.

Second, on a more philosophical level, we must be ever mindful of our role as public servants. By working in the Public Service of Canada, we subscribe to the Values and Ethics Code for the Public Service which is clear that "the democratic mission of the Public Service is to assist Minister,

under law, to serve the public interest" and which requires us to follow "the relevant provisions of more general application" of a series of Acts, some of which I have referenced earlier in this article.

We are not authorized to pick and choose the Acts we like best or feel most comfortable with; that is not our role or our mandate. Rather, it is our responsibility and our accountability, to loyally implement the complete legislative framework politicians and Canadians have given us. Only by examining all of the pieces of legislation within this framework do we fulfil these responsibilities, and reduce the risks of implementing narrow, short-term solutions that will harm us and our successors.

The author would like to express his appreciation to Lisa Hardy, Assistant Commissioner, Communications and Citizen Engagement Sector, Correctional Service of Canada, for her advice in the preparation of this article. Her help was invaluable but the views expressed are those of the author.

Servir l'intérêt public

Par Simon Coakeley,

sous-commissaire, région de l'Atlantique, Service correctionnel du Canada

Une des caractéristiques de la fonction publique est que les fonctionnaires qui prennent des décisions doivent tenir compte des nombreuses priorités et politiques, et doivent toujours être conscients que ces priorités sont souvent concurrentielles, et même contradictoires. Que ce soit dans un contexte de travail au niveau fédéral, provincial ou municipal, et quelle que soit la place qu'ils occupent dans la hiérarchie, il arrive que les fonctionnaires doivent concilier ces divers impératifs, et, souvent, ce n'est pas une tâche facile.

... j'ai eu l'occasion d'être exposé à certains des facteurs qui constituent ce contexte élargi – pas seulement ceux qui prennent leur source dans les lois...

Il est dans la nature humaine – peut-être parce que c'est pratique et apparemment efficace – d'invoquer une hiérarchie d'impératifs pour nous aider à prendre des décisions, mais si la hiérarchie est inappropriée ou incomplète, alors il se peut que nous nous trouvions à résoudre un problème immédiat en hypothéquant l'avenir. Si nous ne regardons pas le contexte élargi, nous risquons de prendre une décision facile, applicable à court terme, mais qui ne pourra résister au temps, une décision qui pourrait en fait nous causer, ainsi qu'aux personnes qui nous succèderont, plus de problèmes plus tard.

Mon expérience personnelle au sein du système fédéral étant diversifiée, j'ai eu l'occasion d'être exposé à certains des facteurs qui constituent ce contexte élargi – pas seulement ceux qui prennent leur source dans les lois – et qui influencent les cadres supérieurs lors de la formulation de recommandations et de la prise de décisions. Toutefois, mon expérience du système canadien de justice pénale se rapproche plus de celle du Canadien moyen que de celle d'un professionnel de la justice pénale de carrière, qui a toujours travaillé dans les domaines liés à la police, les services correctionnels ou dans d'autres emplois connexes.

En raison de mon expérience plus générale, j'en suis venu à me rendre compte que les lois nous permettent de faire des choses, mais qu'elles nous contraignent également. Ainsi, la Loi sur le système correctionnel et la mise en liberté sous condition (LSCMLC) maintient l'existence du Service correctionnel du Canada (SCC), prévoit la nomination du commissaire et l'autorise à gérer le Service, en partie, en élaborant et en mettant en œuvre des directives du commissaire qui établissent des orientations et des principes importants sur le traitement des délinquants et l'administration de leurs peines. Mais cela ne s'arrête pas là.

La LSCMLC ne constitue qu'une des composantes de notre cadre législatif, et il est important que nous tous qui travaillons au SCC prenions en considération les nombreuses autres lois qui orientent nos comportements et nos décisions. Par exemple, l'affectation des ressources financières et la façon dont ces ressources doivent être dépensées sont régies par la Loi sur la gestion des finances publiques (LGFP); l'embauche du personnel est régie par la Loi sur l'emploi dans la fonction publique (LEFP). La LSCMLC n'est pas seule; elle fait partie d'un ensemble, et il ne peut en être autrement. Sans ces autres lois, le commissaire du SCC ne disposerait pas d'un budget ou il n'aurait pas l'autorité de le dépenser, et il n'aurait pas le pouvoir d'embaucher des employés pour faire le travail du SCC.

Il y a donc la LSCMLC, et les autres lois en vertu desquelles nous avons les ressources financières et humaines qui nous permettent d'obtenir des résultats correctionnels. Mais le portrait n'est pas encore complet. Tout comme certaines lois confèrent une autorité aux gestionnaires des ministères et des organismes, d'autres nécessitent que cette autorité soit exercée dans le cadre de certains paramètres.

À cet égard, la Loi sur les langues officielles, la Loi canadienne sur les droits de la personne, la Loi sur l'équité en matière d'emploi, la Loi sur l'accès à l'information et la Loi sur la protection des renseignements personnels, etc., sans parler du grand nombre de mesures législatives subordonnées, comme les règles régissant les marchés publics, des politiques et des conventions collectives, doivent toutes être prises en considération par les décideurs. Il peut s'avérer difficile de trouver un équilibre en présence de ces nombreux textes législatifs. Comme je l'ai déjà dit, adopter une approche trop étroite et trop rapide présente des risques et des problèmes pour le long terme.

Comme vous le voyez, le SCC a beaucoup plus que la LSCMLC pour le guider dans la contribution qu'il apporte à la sécurité publique; les droits linguistiques des employés du SCC et des délinquants, les processus budgétaires du SCC, les règlements régissant la passation de contrats et la dotation sont couverts par d'autres lois. Vous voyez aussi que, pour en arriver à un équilibre, il ne s'agit pas simplement de décider qu'une loi peut ou devrait en éclipser une autre, parce que sauf en des cas exceptionnels (p. ex. la Charte canadienne des droits et libertés), les lois ne s'éclipsent pas les unes les autres. Elles coexistent, et il nous faut harmoniser le tout.

C'est aussi la raison pour laquelle il est trop simpliste et inapproprié de chercher à obtenir une opinion qui nous donne un faux sentiment de certitude et de clarté qui, à son tour, nous amène à tort à penser que « en cas de doute, la réponse est toujours X ». C'est plus complexe que cela. Et même si nous avons tendance à trouver une certaine

clarté dans ce que nous considérons comme la principale loi qui régit notre travail, le fait de laisser « notre » loi en éclipser d'autres peut causer bien des problèmes dans deux grands domaines.

D'abord, du point de vue pratique, nous nous plaçons en position d'être contestés, et il est hors de doute que nous perdrons, indépendamment de nos bons motifs et de nos bonnes intentions, ce qui prouvera que d'adopter une approche équilibrée et plus globale au tout début constitue réellement la voie vers l'efficience, l'efficacité et la durabilité à long terme.

Ensuite, du point de vue philosophique, nous devons toujours avoir à l'esprit notre rôle de fonctionnaire. En travaillant à la fonction publique du Canada, nous souscrivons au Code de valeurs et d'éthique de la fonction publique, qui prévoit que « La fonction publique a pour mission démocratique d'aider les ministres à servir l'intérêt public dans le cadre de la loi », et qui exige que les fonctionnaires respectent « les dispositions pertinentes d'application plus générale » énoncées dans une série de lois, dont celles que j'ai mentionnées ci-dessus.

Nous ne sommes pas autorisés à choisir les lois que nous préférons ou celles avec lesquelles nous sommes le plus à l'aise; ce n'est ni notre rôle ni notre mandat. Nous devons plutôt mettre fidèlement en application le cadre législatif complet que la classe politique et les citoyens canadiens nous ont donné. C'est seulement en tenant compte de toutes les lois qui constituent ce cadre que nous assumons nos responsabilités et réduisons les risques d'appliquer des solutions à court terme qui nous feront du tort, ainsi qu'à nos successeurs.

Nous ne sommes pas autorisés à choisir les lois que nous préférons ou celles avec lesquelles nous sommes le plus à l'aise; ce n'est ni notre rôle ni notre mandat

L'auteur désire exprimer ses remerciements à Lisa Hardy, commissaire adjointe, Secteur des communications et de l'engagement des citoyens, Service correctionnel du Canada, pour ses conseils en vue de la préparation du présent article. Son aide a été très précieuse. Cependant, les opinions exprimées sont celles de l'auteur.

Securing Inmate Information Following a Pardon Revocation

By Jaimie Banks,

Communications Officer, Information Management Services, Correctional Service of Canada

The Correctional Service of Canada (CSC) has recently developed a new process that will allow CSC officials to flag newly admitted inmates who were once pardoned.

When an inmate is pardoned, their files are removed from the Canadian Police Information Centre (CPIC), the Offender Management System (OMS), and other criminal records databases and filed in separate pardons databases. A pardon dictates that an inmate's records, though not erased, are not to be accessed by anyone. If the pardon is later revoked, the inmate's records are retrieved from the separate database, allowing staff access to vital historical information.

Under the current process, it can take some time before news of a pardon revocation reaches CSC officials – sometimes long after the inmate has been admitted to prison. This can create challenges if intake staff is not aware of the inmate's criminal background and history in prison. Past problems with other inmates can be an issue and should always be taken into consideration when assigning an inmate to a penitentiary.

When these issues recently surfaced, CSC took the lead in developing an internal mechanism by which the safety of inmates and staff in federal institutions would be reinforced.

"It can be a problem when CSC staff does not have quick access to information from inmates' prior convictions," explains Information Management Services Director General Richard Harvey. "It is important that we know about the previous actions and behaviour of inmates under CSC supervision, in order to make an appropriate correctional plan tailored to their needs and criminal history."

Under the new process, when a newly admitted inmate arrives at a CSC intake unit, staff members add the inmate's information into the OMS. The OMS database then compares files with the pardons databases to see if the individual has previously been incarcerated and has received a pardon. If a match is established, the inmate is flagged for immediate review by the RCMP. When the RCMP confirms the match, information pertaining to the inmate is then moved back into OMS to allow operational staff access to it.

Not only will this move improve the way that CSC manages inmate and staff safety, it is also an important step in improving information sharing between CSC, the National Parole Board and the RCMP.

Sécuriser l'information des détenus après une révocation de la réhabilitation

Par Jaimie Banks,

agente des communication, Services de gestion de l'information, Service correctionnel du Canada

Le Service correctionnel du Canada (SCC) a récemment conçu un nouveau processus qui permettra aux responsables du SCC d'apposer un indicateur aux délinquants nouvellement admis qui ont déjà obtenu une réhabilitation.

Quand un délinquant est réhabilité, son dossier est retiré du Centre d'information de la police canadienne (CIPC), du Système de gestion des délinquants (SGD) et d'autres bases de données sur les casiers judiciaires et versé dans des bases de données distinctes sur les réhabilitations. Une réhabilitation signifie que personne ne peut accéder aux dossiers du délinquant, bien que ceux-ci ne sont pas effacés. Si la réhabilitation est révoquée plus tard, on récupère les dossiers du délinquant dans les bases de données séparées pour permettre au personnel d'avoir accès aux données historiques essentielles.

Dans le cadre du processus en vigueur, il peut s'écouler du temps avant que les responsables du SCC ne soient informés d'une révocation de la réhabilitation. Parfois ils l'apprennent longtemps après que le délinquant ait été admis en prison. Le fait que le personnel à l'évaluation initiale ne soit pas au courant des antécédents criminels du délinquant et de son passé en prison peut représenter des défis. Les difficultés que le délinquant aurait eues avec d'autres détenus peuvent poser problème et doivent toujours être prises en considération quand on transfère un délinquant dans un pénitencier.

Quand il en a été de nouveau question récemment, le SCC a pris l'initiative de développer un mécanisme interne qui permettrait de renforcer la sécurité des délinquants et du personnel dans les établissements.

« Ça peut être difficile si le personnel du SCC ne peut pas avoir accès rapidement à l'information sur les condamnations antérieures des détenus », explique le directeur général des Services de gestion de l'information, Richard Harvey. « Il est important que nous connaissions les actes et comportements antérieurs des délinquants sous surveillance du SCC, pour lui offrir un plan correctionnel adapté à ses besoins et à son historique criminelle. »

Dans le cadre du nouveau processus, lorsqu'un détenu est nouvellement admis à l'unité d'admission du SCC, un membre du personnel ajoute l'information du détenu dans le SGD. La base de données du SGD compare ensuite ses dossiers avec ceux contenus dans les bases de données sur les réhabilitations afin de vérifier si l'individu a déjà été incarcéré et s'il a reçu un pardon. Si l'on parvient à trouver une correspondance, on appose au délinquant un identificateur d'examen immédiat par la GRC. Quand la GRC confirme qu'il y a correspondance, l'information se rapportant au délinquant est réactivée dans le SGD afin de permettre au personnel opérationnel d'y avoir accès.

Ceci permettra au SCC non seulement d'améliorer sa façon de gérer la sécurité des délinquants et du personnel mais aussi d'améliorer considérablement l'échange de renseignements entre le SCC, la Commission nationale des libérations conditionnelles et la GRC.

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Congress Honorary Chair:
The Honourable Michael J.L. Kirby (Senate of Canada – 1984-2006)

"Building and Sustaining Safe, Healthy Communities"

Safe and Healthy communities are a cornerstone of Canadian society and affect all citizens, in particular youth. The major factors that impact the health of a community include personal and public safety, which underscore physical and mental well being.

Canadians have long believed that the availability and provision of adequate health services are a Canadian value. While there has been much debate about waiting times and the availability of sufficient health care professionals for physical illness, relatively little has been said about mental health services. Indeed youth and adults suffering from severe mental health problems often fend for themselves. The lack of sufficient community and institutional mental health capacity has caused them to find "shelter" either in the streets or unfortunately in correctional institutions.

While these individuals continue to suffer, wander the streets, panhandle and live on street corners in the middle of winter, government agencies and the police are reacting to the outcomes without being in a position to really solve the problem at its source. Data from the year 2001 provided by the London Ontario Police Service suggest that between 2.4 and 5.8% of the total police budget was spent doing what is essentially the work of mental health professionals. The Courts in Ontario have had to deal with Charter challenges because some accused have been remanded into custody while awaiting forensic assessments. The Correctional Service of Canada reports that 10% of its admitted offenders had current psychiatric diagnoses while 20% were being prescribed medication for mental health needs. From the public safety perspective, when timely treatment is not provided to those in need because of a lack of appropriate mental health care, it leads to risks for those so afflicted and for the population at large.

Safety for members of civil society requires much more than quality physical and mental health care, adequate policing and correctional programs for its members. Ultimately, public safety is dependent upon the health of the community body. This requires those features that will ensure the prevention of crime, strategies to assist those who seek to reintegrate and ready access to needed resources. These include education, employment opportunities, housing, family and social supports, as well as defined roles and acceptance for all its members. Finally, focusing on a community development approach involving partnerships will ensure a more effective service delivery system.

Congress 2007 will feature major research in the areas of mental health and crime prevention. Within the parameters of safe and healthy communities however, it will venture much further into the other areas that have a daily and strategic bearing on the safety and quality of life of Canadians.

Workshops

Thursday, November 1st 2007

13:30 – 17:00

#1 Mental health and corrections: Just the facts please

#2 Safeguarding the community: A therapist's perspective

#3 Crime and mental health – Myths, economics and social investments

#4 Fetal Alcohol Spectrum Disorder (FASD) in the correctional population: Determining incidence and next steps

Friday, November 2, 2007

8:30 – 12:00

#5 What is a crime? An update

#6 Gender, ethno-cultural factors and public policy

#7 Social capital and restorative justice – An approach to better living

#8 The changing Canadian profile – Demographics and their impact on healthy communitie – Showcasing success stories

13:30 – 17:00

#9 Sex offender registration vs intervention and public safety – Divergent opinions

#10 The impact of substance abuse on the health of communities

#11 Dealing with concurrent diagnoses in aboriginal communities

#12 The origins and impact of youth gangs on the community and their management

Saturday, November 3, 2007

8:30 – 12:00

#13 Police/Community partnerships – Best practices in crime prevention

#14 A Police/Mental health partnership on patrol

#15 Community policing: Panacea or illusion?

#16 Who are the victims of mentally ill offenders and how do we assure their safety?

Accomodations

Hotel	Rate	Cut-Off Date	# of Rooms Available
Sheraton Centre Toronto Hotel 123 Queen Street W. Toronto, ON M5H 2M9 Tel : 416-361-1000 Fax : 416-947-4874	$199 per night (plus taxes) Single or double occupancy	Septembe 29, 2007	October 31 : 350 November 01 : 350 November 02 : 350 November 03 : 200

For additional information, please contact the

Canadian Criminal Justice Association

1750 Courtwood Cr., #308, Ottawa, Ontario, Canada K2C 2B5

Telephone: 613-725-3715 – Fax: 613-725-3720

E-mail: ccja@bellnet.ca – Web Site: www.ccja-acjp.ca

31st Canadian Congress on Criminal Justice
October 31 - November 3, 2007

31e Congrès canadien de justice pénale
Du 31 octobre au 3 novembre 2007

Building and Sustaining Safe, Healthy Communities
Bâtir et soutenir des communautés saines et plus sûres

Canadian Criminal Justice Association
Association canadienne de justice pénale

Ontario Association of Corrections & Criminology

31st Congress on Criminal Justice

Sheraton Centre Hotel, Toronto, Ontario, Canada
October 31 – November 3, 2007
Hosted by
Canadian Criminal Justice Association (CCJA) and
Ontario Association of Corrections and Criminology (OACC)

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REGISTRATION FEES: Please ensure that you comply with both the date and membership requirements in order to determine what fee is applicable to you.

Please check appropriate line

	UNTIL June 30th / 07	**FROM** July 1st /07
• Member of the CCJA - **Membership #**_____	$ 350.00 ☐	$ 400.00 ☐
• Not a member of CCJA	$ 400.00 ☐	$ 450.00 ☐
• Student (**note 1**)	$ 125.00 ☐	$ 125.00 ☐
• Daily on-site registration	$ 150.00 ☐	$ 175.00 ☐

Notes: 1. This fee allows access to professional activities only, meal tickets may be purchased separately. Students must submit verification of current full-time student status.

2. **Refund and Cancellation Policy**: A processing fee of $50.00 will be applicable to all cancellations received prior to October 1st , 2007. **(Cancellations must be in writing).** No refund will be made after that date; however, **the registration may be transferred to another person if written notice is received from the original registrant.**

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31e Congrès canadien de justice pénale

Du 31 octobre au 3 novembre 2007
Hôtel Sheraton Centre, Toronto, Ontario, Canada

Président d'honneur du Congrès:
L'honorable Michael J.L. Kirby (Sénat du Canada – 1984-2006)

« Bâtir et soutenir des communautés saines et plus sûres »

La sécurité et la santé des communautés sont des caractéristiques fondamentales de la société canadienne; elles concernent tous les citoyens. La sécurité personnelle et la sécurité publique, le bien-être physique et mental sont les principaux facteurs ayant des incidences sur la santé d'une communauté.

Les Canadiennes et les Canadiens croient depuis longtemps que la disponibilité et la prestation de services de santé adéquats incarnent une de leurs valeurs fondamentales. Bien qu'on ait grandement discuté des temps d'attente et du nombre insuffisant des professionnels de la santé pour traiter les maladies physiques, on n'a très peu parlé des services de santé mentale. À vrai dire, il arrive souvent que les personnes atteintes de troubles mentaux graves aient à se débrouiller toutes seules. L'insuffisance des services de santé mentale communautaires et institutionnels les a forcées à trouver « refuge » dans la rue ou, tristement, dans les établissements correctionnels.

Alors que ces personnes continuent de souffrir, d'errer dans les rues, de quêter sur les coins de rues en plein hiver, les organismes gouvernementaux et la police concentrent leurs efforts sur les résultats du problème sans être en mesure de le régler à sa source. Selon des données de 2001 fournies par le Service de police de London (Ontario), de 2,4 % à 5,8 % du budget global de la police est consacré à des tâches qui devraient normalement être assumées par des professionnels de la santé mentale. Les cours de justice ontariennes ont été saisies d'un certain nombre de contestations fondées sur la Charte par certains accusés qui avaient été renvoyés sous garde en attendant que soit complétée une évaluation médico-légale. Selon le Service correctionnel du Canada, 10 % des détenus sous sa garde ont été diagnostiqués comme souffrant de problèmes psychiatriques, alors que 20 % des détenus doivent consommer des médicaments pour soigner de tels problèmes. De la perspective de la sécurité publique, le fait de ne pas offrir des soins de santé mentale convenables et de façon opportune à ceux qui en ont besoin met ces personnes à risque, de même que l'ensemble de la population.

La sécurité des membres de la société civile dépend de beaucoup plus que de soins de santé physique et mentale de bonne qualité, et de services policiers et correctionnels adéquats. En dernier ressort, la sécurité publique dépend de la santé de la collectivité comme entité. Il faut pour cela que soient mis en place des mécanismes qui contribueront à la prévention du crime, des stratégies pour venir en aide aux personnes qui tentent de réintégrer la société et qui assureront un accès facile aux ressources nécessaires. Cela suppose la mise en œuvre de programmes d'éducation, une augmentation des possibilités d'emploi, la disponibilité de logements, des appuis familiaux et sociaux, de même qu'une définition claire des rôles et une acceptation de chacun des membres qui composent la société. Enfin, mettre l'accent sur une approche de développement communautaire axée sur des partenariats permettra d'assurer une prestation des services plus efficace.

Le Congrès 2007 braquera les projecteurs sur les principales recherches en matière de santé mentale et de prévention du crime. Tout en demeurant fidèles au thème des communautés saines et plus sûres, nous pousserons plus loin notre exploration d'autres domaines qui pourraient avoir des effets quotidiens et stratégiques sur la sécurité et la qualité de vie des Canadiennes et des Canadiens.

Liste des ateliers

Le jeudi 1er novembre 2007

13 h 30 – 17 h

#1 La santé mentale et les services correctionnels : tenons-nous en aux faits

#2 Les vues d'un thérapeute sur les moyens de protéger la société

#3 Criminalité et santé mentale : les mythes, les considérations économiques et l'investissement social

#4 Le trouble du spectre de l'alcoolisation fœtale (TSAF) : définir et mettre en œuvre les pratiques exemplaires

Le vendredi 2 novembre 2007

8 h 30 – 12 h

#5 Qu'est-ce qu'un crime? Une mise à jour

#6 La place du sexe et des facteurs ethnoculturels dans les politiques publiques

#7 Le capital social et la justice réparatrice : des éléments d'une approche de vie plus harmonieuse

#8 L'évolution du profil canadien – L'incidence des facteurs démographiques sur la santé des collectivités. Pleins feux sur nos réussites.

13 h 30 – 17 h

#9 Le registre des délinquants sexuels : une mesure de sécurité publique? Les opinions divergent

#10 Les répercussions de l'abus des stupéfiants sur la santé des communautés

#11 Comment composer avec les problématiques concomitantes des communautés autochtones?

#12 Les origines et les incidences des bandes de jeunes et les moyens de composer avec ce phénomène

Le samedi 3 novembre 2007

8 h 30 – 12 h

#13 Un partenariat entre la police et la communauté : certaines pratiques exemplaires en prévention du crime

#14 Une collaboration de la police et de spécialistes en santé mentale

#15 Les services de police communautaires : une panacée ou une illusion?

#16 Savoir reconnaître les victimes et assurer leur sécurité

Hébergement

Hôtel	Tarif	Date Limite	# de Chambres disponibles
Hôtel Sheraton Centre Toronto 123, rue Queen ouest Toronto, ON M5H 2M9 Tél: 416-361-1000 Téléc: 416-947-4874	$199 par nuitée (taxes en sus) occupation simple ou double	Le 29 septembre 2007	31 octobre : 350 01 novembre : 350 02 novembre : 350 03 novembre : 200

Pour plus de renseignements, veuillez communiquer avec

l'Association canadienne de justice pénale

1750, croissant Courtwood, pièce 308, Ottawa, Ontario, Canada K2C 2B5

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Vos hôtes

Association canadienne de justice pénale (ACJP) et Ontario Association of Corrections and Criminology (OACC)

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Notes: 1. Ce tarif ne donne accès qu'aux activités scientifiques, coupons pour repas peuvent être achetés séparément. Les étudiants devront présenter une attestation de leur statut d'étudiant à plein temps.

2. Politique de remboursement et d'annulation: Des frais de traitement de $50.00 seront exigés pour toute annulation effectuée le ou avant le 1er octobre 2007. (Les annulations doivent être faites par écrit) Il n'y aura aucun remboursement après cette date. Il est toutefois possible de transférer cette inscription à une autre personne, il suffit d'en donner avis par écrit.

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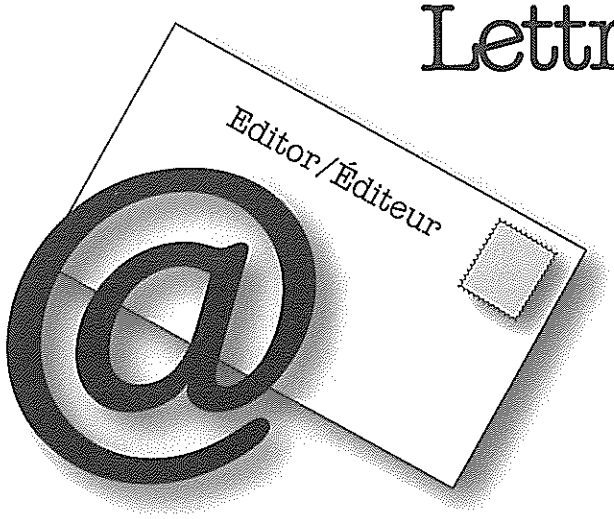
Letter to Members / Lettre aux membres



Dear CCJA Members,

As part of our continuing effort to educate and inform the membership, the Policy Review Committee (PRC) is pleased to provide a brief synopsis of the current House of Commons and Senate criminal justice Bills.

I am also pleased to announce that we received near unanimous support and approval on both our C-9 (Conditional Sentencing) and C-10 (Mandatory Minimums) briefs to the House of Commons Standing Committee. Our C-10 testimony is set to take place on Dec 6.

The PRC also continues to actively debate and write on some of the Bills that follow. In particular, we have recently discussed Bills such as: lower the age of consent, lowering the legal alcohol limit, street racing, Youth Criminal Justice Act sentencing amendments, and statutory release.

I would also like to take this opportunity to personally invite any member to contact me and share their thoughts and opinions on these or any other Bills. I can be reached by email at mihaelamicole@yahoo.com or by phone at (613) 744-7940.

Thank you in advance and have a great holiday season.

Mihael Cole

CCJA-Policy Review Committee Chairman

House of Commons Government Bills:

C-9: An Act to amend the Criminal Code (conditional sentence of imprisonment) (The Minister of Justice) [Fist Reading in the Senate, November 6th, 2006]

This enactment amends section 742.1 of the *Criminal Code* to provide that a person convicted of a serious personal injury offence as defined in section 725 of that Act, a terrorism offence or a criminal organization offence prosecuted by way of indictment for which the maximum term of imprisonment is ten years or more is not eligible for a conditional sentence.

C-10: An Act to amend the Criminal Code (minimum penalties for offences involving firearms) and to make a consequential amendment to another Act (The Minister of Justice) [Second Reading and Referred to Committee]

This enactment amends the *Criminal Code* to provide for escalating minimum penalties — according to the number, if any, of previous convictions — of five, seven and ten years for eight serious offences involving the use of a firearm if the firearm is either a restricted or prohibited firearm or if the offence was committed in connection with a criminal organization, to provide for escalating minimum penalties — according to the number, if any, of previous convictions — ranging between one and five years for other firearm-related offences and to create two new offences: breaking and entering to steal a firearm and robbery to steal a firearm.

C-17: An Act to amend the Judges Act and certain other Acts in relation to courts (The Minister of Justice) [Report Stage in the House of Commons, November 6th, 2006]

Part 1 of this enactment amends the *Judges Act* to implement the federal government's response to the report of the most recent Judicial Compensation and Benefits Commission regarding salaries and benefits of federally appointed judges. Included is a mechanism to divide judicial annuities upon breakdown of the conjugal relationship.

Part 2 makes certain amendments to the *Federal Courts Act* and a number of technical amendments to other Acts in relation to courts.

C-18: An Act to amend certain Acts in relation to DNA identification (The Minister of Justice) [Second Reading and Referred to the Committee]

This enactment amends the *Criminal Code*, the *DNA Identification Act* and the *National Defence Act* to facilitate the implementation of *An Act to amend the Criminal Code, the DNA Identification Act and the National Defence Act,* chapter 25 of the Statutes of Canada, 2005. The enactment makes certain technical changes to those Acts. It also

(a) specifies that the provisions in section 487.051 of the *Criminal Code* relating to orders for the taking of samples of bodily substances for forensic DNA analysis apply to persons who are sentenced or are discharged under section 730 of, or are found not criminally responsible on account of mental disorder for, designated offences committed at any time, including before June 30, 2000, and makes similar amendments to the *National Defence Act;*

(b) allows an order to be made under section 487.051 of the *Criminal Code* at a hearing whose date is set within 90 days after the day on which a person is sentenced, discharged under section 730 or found not criminally responsible on account of mental disorder, and makes similar amendments to the *National Defence Act*;

(c) adds attempted murder and conspiracy to commit murder or to cause another person to be murdered to the offences covered by section 487.055 of the *Criminal Code;*

(d) permits an application to be made under section 487.055 of the *Criminal Code* when a person is still serving a sentence of imprisonment for one of the specified offences, rather than requiring that they be serving a sentence of imprisonment of two years or more for that offence;

(e) in certain circumstances, allows a court to require a person who wishes to participate in a hearing relating to an order or authorization under the *Criminal Code* for the taking of samples of bodily substances for forensic DNA analysis to appear by closed-circuit television or a similar means of communication;

(f) allows samples of bodily substances to be taken under the *Criminal Code* and the National Defence Act at the place, day and time set by an order or a summons or as soon as feasible afterwards;

(g) specifies that it is an offence under the *Criminal Code* and the National Defence Act to fail to comply with such an order or summons;

(h) requires the Commissioner of the Royal Canadian Mounted Police to destroy the bodily substances collected under an order or authorization and the information transmitted with them if, in the opinion of the Attorney General or the Director of Military Prosecutions, as the case may be, the offence to which the order or authorization relates is not a designated offence;

(i) enables the Commissioner to communicate internationally the information that may be communicated within Canada under subsection 6(1) of the DNA Identification Act; and

(j) allows the Commissioner to communicate information for the purpose of the investigation of criminal offences, and allows the subsequent communication of that information for the purpose of the investigation and prosecution of criminal offences.

C-19: An Act to amend the Criminal Code (street racing) and to make a consequential amendment to the Corrections and Conditional Release Act (The Minister of Justice) [Debated at second reading in the Senate, November 6th, 2006]

This enactment amends the *Criminal Code* to create an offence of street racing based on dangerous driving and criminal negligence offences.

This enactment increases, in street racing situations, the maximum punishments for some offences and also provides for minimum prohibitions on driving that increase on a second and subsequent offence.

This enactment also makes a consequential amendment to the Corrections and Conditional Release Act.

C-21: An Act to amend the Criminal Code and the Firearms Act (non-registration of firearms that are neither prohibited nor restricted) (The Minister of Public Safety) [First Reading]

This enactment amends the *Criminal Code* and the Firearms Act to repeal the requirement to obtain a registration certificate for firearms that are neither prohibited firearms nor restricted firearms.

C-22: An Act to amend the Criminal Code (age of protection) and to make consequential amendments to the Criminal Records Act (The Minister of Justice) [Second Reading in the House of Commons and Referred to the Committee]

This enactment amends the Criminal Code to raise the age, from 14 to 16 years, at which a person can consent to non-exploitative sexual activity. It creates an exception in respect of an accused who engages in sexual activity with a 14- or 15-year-old youth and who is less than five years older than the youth. It also creates an exception for transitional purposes in respect of an accused who engages in sexual activity with a 14- or 15-year-old youth and who is five or more years older than the youth if, on the day on which this Act comes into force, the accused is married to the youth. The exception also applies to the accused if, on the day on which this Act comes into force, he or she is the common-law partner of the youth or has been cohabiting with the youth in a conjugal relationship for less than one year and they have had or are expecting to have a child as a result of the relationship, and the sexual activity was not otherwise prohibited before that day.

C-23: An Act to amend the Criminal Code (criminal procedure, language of the accused, sentencing and other amendments) (The Minister of Justice) [Second Reading in the House of Commons and Referred to the Committee]

This enactment amends various provisions of the Criminal Code in relation to criminal procedure, language of the accused, sentencing and other matters.

The amendments respecting criminal procedure provide for, among other things,

(a) the use of a means of telecommunication to forward warrants for the purpose of endorsement;

(b) changes to the process with respect to the challenge of jurors;

(c) a new election for the accused where a preferred indictment has been filed against him or her or where the Supreme Court of Canada orders a new trial;

(d) an appeal of a superior court order with respect to things seized lying with the court of appeal;

(e) summary dismissal by a single judge of the court of appeal when an appeal has erroneously been filed with that court; and

(f) a summary conviction trial with respect to co-accused that can proceed where one of the co-accused does not appear.

The amendments respecting the language of the accused clarify the application of provisions related to that matter.

The amendments respecting sentencing provide for, among other things,

(a) clarifications with respect to the application of impaired driving penalties;

(b) the power to order an offender not to communicate with identified persons while in custody and the creation of an offence for failing to comply with the order;

(c) the power to delay the sentencing proceedings so that an offender can participate in a provincially approved treatment program;

(d) an increase of the maximum fine that can be imposed for a summary conviction offence to $10,000 and a change with respect to the calculation of the period of imprisonment to be imposed in default of payment of a fine;

(e) the suspension of a conditional sentence order or a probation order during an appeal;

(f) in the case of a person serving a youth sentence who receives an adult sentence, clarification that the remaining portion of the youth sentence is converted to an adult sentence; and

(g) the power of a court to order, on application by the Attorney General and after convicting a person of the offence of luring a child by means of a computer system, the forfeiture of things used in relation to that offence.

The enactment amends the description of the offence of conveying information on betting and book-making so that the offence encompasses the conveying of that information

by any means and makes related changes to the exemption provided with respect to the use of a pari-mutuel system.

Finally, amendments are also made to reclassify the offence of possession of break and enter instruments into a dual procedure offence.

C-25: An Act to amend the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and the Income Tax Act and to make a consequential amendment to another Act (Minister of Finance) [Third Reading in the House of Commons, November 10th 2006]

This enactment amends the Proceeds of Crime (Money Laundering) and Terrorist Financing Act to enhance the client identification, record-keeping and reporting measures applicable to financial institutions and intermediaries. It establishes a registration regime for money services businesses and foreign exchange dealers and creates a new offence for not registering.

It allows the Financial Transactions and Reports Analysis Centre of Canada to disclose additional information to law enforcement and intelligence agencies, and to make disclosures to additional agencies.

It permits the Centre to exchange compliance-related information with its foreign counterparts and permits the Canada Border Services Agency to share information about the application of the cross-border currency reporting regime with its foreign counterparts. It also includes a consequential amendment to the Canada Border Services Agency Act.

It creates an administrative monetary penalty regime.

It amends the Income Tax Act to allow the Canada Revenue Agency to disclose to the Centre, the Royal Canadian Mounted Police and the Canadian Security Intelligence Service information about charities suspected of being involved in terrorist financing activities.

C-26: An Act to amend the Criminal Code (criminal interest rate) (Minister of Justice) [Second Reading in the House of Commons and Referred to the Committee]

This enactment amends the Criminal Code by exempting persons from the application of section 347 of that Act in respect of agreements for small, short-term loans. The exemption applies to persons who are licensed or otherwise authorized to enter into such agreements by designated provinces that have legislative measures that protect recipients of payday loans and that specify a limit on the total cost of those loans.

C-27: An Act to amend the Criminal Code (dangerous offenders and recognizance to keep the peace) (The Minister of Justice) [First Reading]

This enactment amends the dangerous offender and long-term offender provisions of the Criminal Code

(a) to require the prosecutor to advise the court whether the prosecutor intends to proceed with an application for an assessment under those provisions when the prosecutor is of the opinion that the offence for which the offender is convicted is a serious personal injury offence that is a designated offence and that the offender was convicted previously at least twice of a designated offence and was sentenced to at least two years of imprisonment for each of those convictions;

(b) to remove the court's discretion to refuse to order an assessment when it is of the opinion that there are reasonable grounds to believe that the offender might be found to be a dangerous offender or a long-term offender;

(c) to provide that, if the court is satisfied, in a hearing for a dangerous offender designation, that the offence for which the offender has been convicted is a primary designated offence for which it would be appropriate to impose a sentence of imprisonment of two years or more and that the offender was convicted previously at least twice of a primary designated offence and was sentenced to at least two years of imprisonment for each of those convictions, the conditions to make the designation are presumed to have been met unless the contrary is proved on a balance of probabilities; and

(d) to clarify that, even when the conditions to make a dangerous offender designation have been met, the court must consider whether a lesser sentence, including a long-term offender designation, would adequately protect the public and that neither the prosecutor nor the offender has the onus of proof in the matter.

The enactment also amends sections 810.1 and 810.2 of the *Criminal Code*

(a) to allow the duration of a recognizance to be for a period of up to two years if the court is satisfied that the defendant was convicted previously of an offence of a sexual nature against a child or a serious personal injury offence; and

(b) to clarify that the scope of conditions available for recognizances is broad and that those conditions may include electronic monitoring, treatment and a requirement to report to a designated authority.

C-32: An Act to amend the Criminal Code (impaired driving) and to make consequential amendments to other Acts (The Minister of Justice) [First Reading]

This enactment amends the *Criminal Code*

(a) to create an offence of operating a motor vehicle while in possession of a controlled substance as defined in subsection 2(1) of the Controlled Drugs and Substances Act;

(b) to authorize specially trained peace officers to conduct tests to determine whether a person is impaired by a drug or a combination of alcohol and a drug;

(c) to authorize the taking of bodily fluids to test for the presence of alcohol or a drug;

(d) to create an offence of operating a motor vehicle with a concentration of alcohol in the blood that exceeds 80 mg of alcohol in 100 ml of blood and causing bodily harm or death to another person;

(e) to clarify what evidence a person accused of driving with a concentration of alcohol in the blood that exceeds 80 mg of alcohol in 100 ml of blood can introduce to raise a doubt that they were not committing the offence;

(f) to create an offence of refusing to provide a breath sample when the accused knows or ought to know that the accused's operation of a motor vehicle caused an accident resulting in bodily harm to another person or death; and

(g) to increase the penalties for impaired driving.

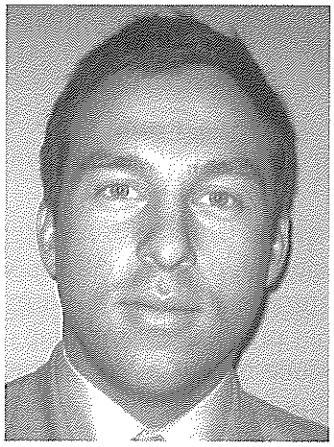
The enactment also makes consequential amendments to other Acts.

C-35: An Act to amend the Criminal Code (reverse onus in bail hearings for firearm-related offences) (The Minister of Justice) [First Reading]

This enactment amends the Criminal Code to provide that the accused will be required to demonstrate, when charged with certain serious offences involving firearms or other regulated weapons, that pre-trial detention is not justified in their case and to introduce additional factors relating to firearm offences that the courts must take into account in deciding whether an accused should be released or detained pending trial.

Ukraine's Penitentiary System: Mass Suicide Attempts Expose Broader Issue

(Special Report – 07/06)



By Walter Kravchuk,

Hons. B.A.; L.L. B. Candidate

Incidents of Self-Harm

As a sign of protest against inhumane treatment, inadequate food, and poor medical care, 24 prisoners attempted suicide by slitting their wrists on Saturday, May 13, 2006 at Prison #30 in L'viv, Ukraine. One other prisoner had sewn his mouth shut in solidarity with the 24 prisoners. Only five days earlier, a similar incident occurred at Prison #100 in the Kharkiv region of Ukraine, where approximately 20 prisoners attempted to cut their veins for similar reasons.

At the time of the May 13th incident, there was no medical staff on duty, forcing the prison staff to handle the situation. At about 2:30pm that day, one protester called the Channel 5 News to report the incident. In a phone interview, he stated, "We are living in inhumane conditions…very unsanitary. We are constantly humiliated and degraded by the staff. Complaints that we have filed do not leave the prison. We had no other choice but to attempt suicide."

…"We are living in inhumane conditions…very unsanitary. We are constantly humiliated and degraded by the staff.

"Protesters" at Prison #30 claim that their attempts at suicide were not entirely to support their "brothers" in the Kharkiv region. Instead, they could no longer endure their own prison's living conditions. Thus, the incident was an expression of collective

frustration felt by the prison population and became an attempt to gain the attention of the society at large through the media.

Penitentiary System

Ukraine's penitentiary system is divided into 4 tiers: the General Regime for first-time offenders and repeat offenders sentenced for minor crimes, Strengthened Regime, Strict Regime, and Special Regime for Ukraine's most dangerous offenders. As a side note, women and minors are placed into separate prisons, which are divided into the first three tiers described above (there is no Special Regime). Ukraine's laws state that offenders under age 14 cannot be imprisoned and are thus protected from the penal system.

Most of Ukraine's prisons were designed and built under the Soviet regime. There are no individual cells and they typically hold 5-50 people. Even in the highest security prisons, where most-dangerous offenders are kept (Tier 4 – Special Regime), individual cells are rare. Prison #30 was designed to hold a maximum of 800 prisoners and is classified a Tier 3 prison (Strict Regime). It currently holds approximately 1200 male inmates. Under such conditions, diseases are rampant. A significant number of prisoners suffer from tuberculosis and are not separated from the rest of the prison population, leaving uninfected prisoners vulnerable to the disease. Unfortunately, tuberculosis is just one of the many infectious diseases that plague prisoners in Ukraine and in turn seriously affect their health and resistance towards the inhumane living conditions.

Prison #30 was designed to hold a maximum of 800 prisoners and is classified a Tier 3 prison (Strict Regime). It currently holds approximately 1200 male inmates.

Employment in prisons is another pressing issue today, as inmates want to work but are facing limited positions. For example, prison #30 is divided into 5 sectors. Only two of them allow prisoners to work, which amounts to only 30% of the prison population. For years, inmates in the "working" sectors of prison #30 have been manufacturing furniture, which is sold to the public. Recently, there have been concerns that the number of workers will decrease due to authorities downsizing the number of available positions. Prisoners have also admitted they are not consistently credited for their work. At times, it takes up to six months to receive payments. Even once paid, they are not always allowed to spend their earnings at the 'jail store.'

Incident Investigation

The local authorities initially denied the protesters' allegations. They stated that prisoners exercise regularly, are provided with adequate food, and live in sanitary conditions. Authorities simply denied the allegation of inmate abuse. In addition, they assured the media that the sustained injuries were very minor. Consequently, there was no medical need to hospitalize the protesters for an extended period of time. However, once local human rights agencies became involved, government officials reversed their position and had admitted that the injuries sustained by the protesters were in fact serious.

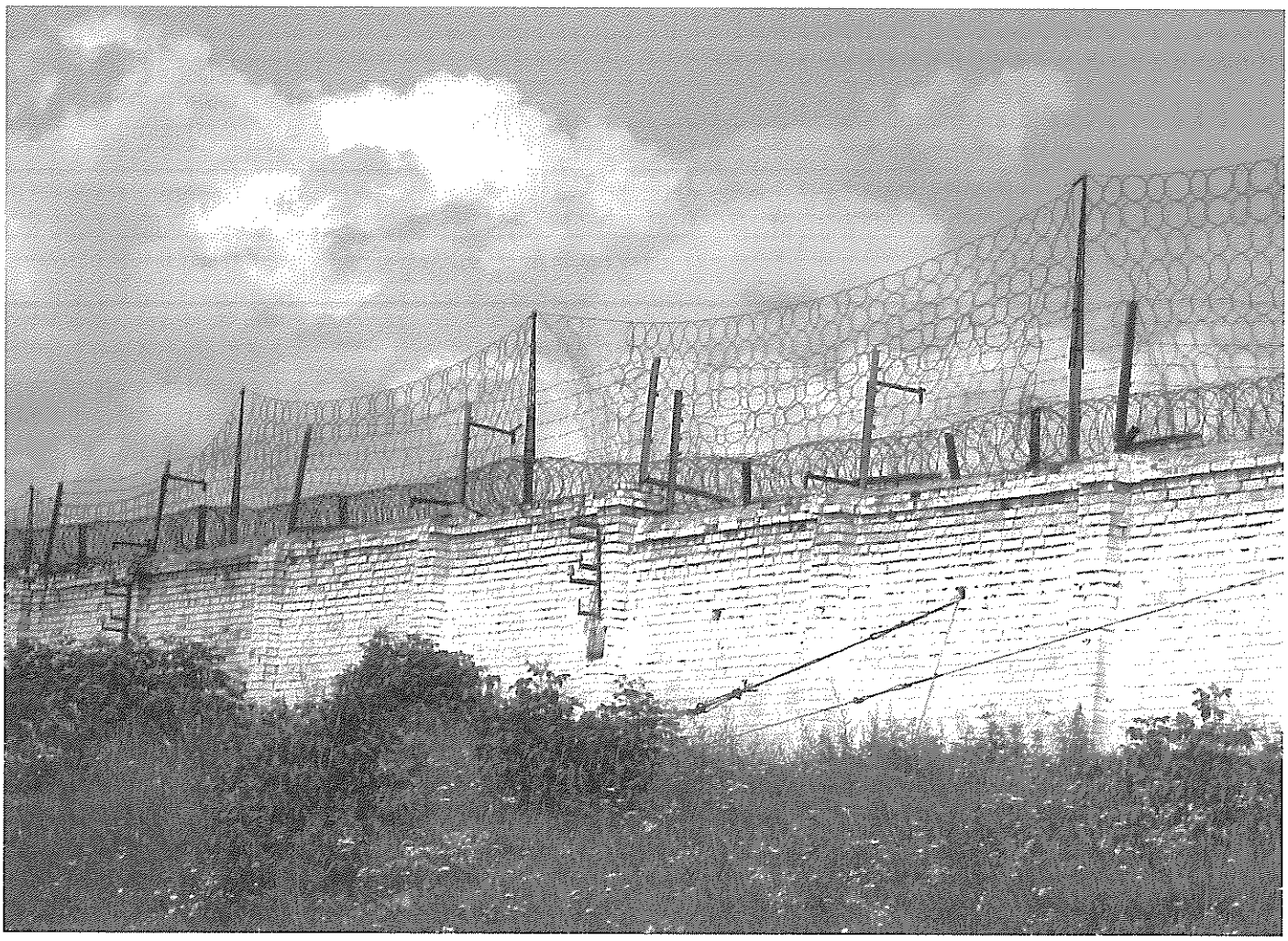
Investigation revealed that most of the protesters are young men born in the 1980s. Most had inflicted three to four cuts on their hands. Oleg Sorochkin, head of the investigatory committee, stated that these were not mere scratches, which was the impression left by the authorities initially. Not all of the wounds were fresh however, which suggests that some prisoners were "cutting" long before this incident. The protesters say the main reason behind their actions was not poor sanitary conditions or quality of food. Rather, it was the inhumane treatment of prisoners by the staff through physical and moral

abuse. Prisoners were complaining that, as punishment, they were held in 'the hole' for 24-28 hours at a time. The hole is an unfinished concrete room with no windows, closed off by metal bars on one side. The punished are fed only once a day and secluded from the rest of the prison population. Staff members do not deny such methods of punishment but state that "prisoners are not held there for a long time."

A former prison #30 employee, who wished to remain anonymous, explained that the practice of surface-cutting and inflicting pain on oneself is a normal occurrence in Ukrainian prisons. Drug addicts often practice cutting to 'relieve tension' that builds up from heavy drug use. Some addicts believe that experiencing 'real' physical pain keeps them from over-dosing. Nevertheless, this interviewee conceded that this form of 'innocent' cutting occurs only in very small groups or on individual basis. The incident at prison #30 is much more than another drug relief and thus deserves the attention of Ukrainian government officials as well as international human rights agencies.

Deviations from Legal Norms

The investigation following the incident at Prison #30 in L'viv revealed many deviations from the law. Unfortunately, such violations are likely the norm across Ukraine's penitentiary system. As mentioned above, prisoners were complaining that they were held in 'the hole' as punishment for bad behaviour. This hole is basically an isolation cell, which is legal under Ukrainian laws. However, law states that such cells must be equipped with a fold-up bed and sheets. The law further indicates that those held in isolation cells are allowed to spend one hour a day outdoors. In addition, their meal frequency and food portions must equal that of the rest of the prison population. Unfortunately, the investigation at prison #30 revealed that none of the mentioned mandates were followed.



International Human Rights

Following the collapse of the Soviet Union in 1991, Ukraine has signed seven key United Nations international conventions and treaties on human rights. In June of 1999, UN Secretary-General Kofi Annan gave the office in Kyiv UN House status. The official UN House opening ceremony took place on June 14th, 2000. Ukraine joined 188 other nations, which supported and obligated themselves to implement the Millennium Declaration and the Millennium Development Goals approved by the UN General Assembly.

On September 11, 1997, Ukraine had signed and submitted European Human Rights Convention ratification documents to the European Committee. Such conventions must be adhered to and take precedence over national laws. Some of the most basic human rights, such as the right not to be tortured, were added in the 1950's, when a convention was drafted in Rome. Once signed, a country could only deviate from a convention in cases of national emergency, where an event is threatening a nation collectively. Even in such cases however, the threatened nation must notify the European Human Rights Committee that it 'must' temporarily stray from the agreement.

After Rome, many more UN General Assemblies took place where new principles were added and older principles were updated. For example, in 1988, the UN added Principle #6, which elaborated on the anti-torture principle: everyone has the right not to be tortured, treated inhumanely or treated in a manner that lowers one's dignity. The national emergency clause was removed for such basic rights. Under no circumstances could a government breach this principle. Principles' aim was to preserve physical and psychological dignity and provide conditions that do not, either temporarily or permanently, distort one's natural senses such as sight, hearing, sense of surrounding and time.

Minimal standards were included with respect to hygiene, food, and medical care. Moreover, under Principle #30, if an inmate exhibits erratic behaviour breaking prison rules, she/he can be punished only in accordance with legal methods. Furthermore, the European Convention includes minimal standards with respect to accommodation levels in prisons. For example, everyone must be placed in a separate cell at night. Even in cases of temporary prison overcrowding, placing more than one person in a cell is not recommended. If there is no ventilation system in place, fresh air must access each cell. Adequate lighting must allow prisoners to work and read without damaging their vision. In addition, every prisoner must have access to a doctor and a psychiatrist. Those who need to see a specialist must be transferred to a special unit or, if needed, to a public hospital under appropriate supervision. To maintain strength and health, prison staff must provide all inmates with well-cooked food of good quality during hours stipulated in the convention. Upon request, every prisoner must be provided with drinking water.

European Human Rights Convention further states that bodily harm, placing one in a dark cell, and inhumane acts are not permitted even as punishment for breaking disciplinary rules. Punishing by controlling food amounts is only permitted with a doctor's prior approval, in which case it has been determined that the prisoner can withstand such punishment. The punished individual has the right to appeal any punishment by submitting a formal complaint to the authorities, where one believes that the punishment is unjust or extreme.

The hole is an unfinished concrete room with no windows, closed off by metal bars on one side. The punished are fed only once a day...

The investigation at Prison #30 in L'viv exposed many convention violations. Despite domestic laws and the signing of European Human Rights Convention, Ukraine's penitentiary system is operating well below minimal international standards.

Problems Demand Solutions

These recent incidents of self-harm have exposed severe problems in Ukraine's penitentiary system forcing state powers in Kyiv to re-evaluate the system from top to bottom and attempt to deliver fast yet effective results. Currently, approximately 180,000 people occupy 182 prisons across Ukraine.

Government funding per prisoner equals 4 hryvni (Ukrainian currency) per 24 hours. According to the exchange rate on June 16, 2006, that equates to $0.80 USD, $0.91 CDN, and †0.63 EU. Authorities in Kyiv state that it is all the budget allows: "We must make due with what we have." Authorities estimate that it would cost about 2 billion US dollars to modernize Ukraine's penitentiary system. Due to such extreme under-funding, Ukrainian prisons operate in conditions well below European standards. Consequently, this issue has caught the attention of many experts in both the European Union and European Committee Against Tortures.

Antonina Taranovska, Director of Amnesty International (Ukraine), has a positive outlook since making changes to Ukraine's penitentiary system is finally on the priority list of nation's top authorities, including the First Lady. She states, "Without a doubt, these recent suicide attempts have finally brought the state's attention to this problem. It's also time for human rights agencies to get more involved."

On May 26, 2006, a roundtable discussion took place at the Ministry of Justice. Included in the issues at hand was the level of human rights protection with respect to punishment in prisons. The discussion involved input from various community organizations, among them one from the Kharkiv Region. Also in attendance were an organization from the Vynnyky Region, International Human Rights Association (Ukraine), International Charity Foundation "Rebirth", Human Rights Without Borders, Ukraine-Helsinki Human Rights Union, and many more.

These organizations were outspoken and offered suggestions to reforming Ukraine's penitentiary system. One suggestion was to raise the salary of prison staff. It was also recommended that inspectors would carry out 'pop-in' visits without any prior notice. At this time, such visits are limited only to the President of Ukraine and the Head of Parliament.

Ukraine's Ministry of Justice had proposed a system of reviewing complaints written by prisoners, their family members, and those who have served their sentence. One agency member had suggested that the Ministry of Justice create a department that would, in turn, analyze and audit the department responsible for sentencing and punishing offenders, while allowing input from community agencies.

Ukraine's Ministry of Justice had proposed a system of reviewing complaints written by prisoners, their family members, and those who have served their sentence

The suggestions and possible solutions put forth sound promising. However, positive results will take time. It is clear that treatment of prisoners in Ukraine is well below international standards. Placing the responsibility of change solely in the hands of government officials is a precarious proposition. Prisoners' most basic rights are being denied on a daily basis. Community agencies must further investigate to fully understand the fundamental causes of the problems in Ukraine's penitentiary system. Further research and awareness is required to draft and implement effective long-lasting solutions.

NOTES:

Research, translation and writing completed by Walter Volodymyr Kravchuk, Law student at the University of Windsor, Ontario.

My acknowledgement to Carla Dassinger for her editorial comments. As Concordia University Alumni, she currently researches in risk assessment and psycho-social needs of specialized populations. She has published and presented in the area of risk assessment and has forthcoming publications in the area of First Nations Mental Health.

Directory of Justice Services
2007 Edition

The Canadian Criminal Justice Association publishes the Directory of Justice Services on an annual basis. There is no other book like it in Canada. It provides complete addresses, telephone and fax numbers, e-mail and web page addresses, and names of persons responsible for most justice services in Canada: police commissions, RCMP divisions, legal aid services, crime compensation boards, ombudsmen, courts, parole boards, correctional services for juveniles and adults, prisoner aid agencies, court workers, voluntary organizations, etc.

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(ISSN: 0847-3668)

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American Correctional Association – 2007 Winter Conference

Place/endroit : Tampa, Florida, U.S.A.
Information/renseignements : American Correctional Association, Convention Department, 206 North Washington Street, Suite 200, Alexandria, VA 22314-2528 U.S.A. Tel/Tél. : (800) 222-5646 ext. 1922. Fax/Téléc. : (301) 918-8198. Web : www.aca.org

March 8 and 9 / les 8 et 9 mars

The 8th Annual Alberta Harm Reduction Conference

Theme/theme : "Walk a Mile in Our Shoes"
Place/endroit : Calgary, Alberta Canada
Information/renseignements : http://www.albertaharmreduction.ca/

March 14 / 14 mars

Journé édutiante sur les droits de l'enfant / Student Salon On The Rights Of The Child

Place/endroit : Faculté de droit, Université d'Ottawa/Faculty of Law, University of Ottawa, Ontario, Canada
Information/renseignements : Ms. Veronica B. Pinero, Human Rights Reserach and Education Center, 57 Louis Pasteur (550), Ottawa, Ontario, Canada K1N 6N5. E-mail/courriel: confcdp@uottawa.ca

March 15 – 17 / du 15 au 17 mars

Conference internationale sur les droits de l'enfant / International Conference on The Rights of The Child

Place/endroit : Faculté de droit, Université d'Ottawa /Faculty of Law, University of Ottawa, Ontario, Canada
Information/renseigements : Ms. Veronica B. Pinero, Human Rights Reserach and Education Center, 57 Louis Pasteur (550), Ottawa, Ontario, Canada K1N 6N5. E-mail/courriel: confcdp@uottawa.ca

May 13 - 17 / du 13 au 17 mai

The 18th International Conference On The Reduction of Drug Related Harm: "Harm Reduction Coming of Age"

Place/endroit : Wassaw, Poland.
Information/renseignements : Internet: www.harmreduction2007.org

August 11 – 16 / du 11 au 16 août

137th Congress of Correction

Host/hôte : American Correctional Association
Place/endroit : Kansas City, MO, USA
Information/renseignements : American Correctional Association, Convention Department, 206 North Washington Street, Suite 200, Alexandria, VA 22314-2528 U.S.A. Tel/tél. : (800) 222-5646 ext. 1922. Fax/téléc. : (301) 918-8198. Web : www.aca.org

September 10 – 12 / du 10 au 12 septembre

What Works With Women Offenders Conference

Host/hôte : Monash University, Medicine, Nursing and Health Sciences
Place/endroit : Prato, Tuscany, Italy
Information/renseignements : Conference Manager, c/ -Department of General Practice, School of Primary Health Care, Monash University, 867 Centre Rd, East Bentleigh, Victoria 3165, Australia. Tel/tél: 61 3 8275 2214. Fax/téléc.: 61 3 8575 2233. E-mail/courriel : katy.symmons@med.monash.edu.au

October 31 – November 3 / du 31 octobre au 3 novembre

31st Canadian Congress on Criminal Justice / 31e Congrès canadien de justice pénale

Theme/thème : "Building and Sustaining Safe, Healthy Communities / Bâtir et soutenir des communautés saines et plus sûres"
Hosts/hôtes : Canadian Criminal Justice Association and Ontario Association on Corrections & Criminology / Association canadienne de justice pénale et l'Ontario Association of Corrections & Criminology
Place/endroit : Sheraton Centre Hotel, Toronto, Ontario, Canada
Information/renseignements : CCJA/ACJP, 1750 Courtwood Cr., #308, Ottawa, Ontario K2C 2B5 Canada. Tel/tél: (613) 725-3715. Fax/téléc.: (613) 725-3720. E-mail/courriel : ccja@bellnet.ca – Web : www.ccja-acjp.ca

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Du 31 octobre au 3 novembre 2007

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